



Construction Corporation
8323 WESTGLEN HOUSTON, TX 77063-6309 (713) 978-6610

SUBCONTRACT

SUBCONTRACT NO:

PROJECT:

OWNER:

SUBCONTRACTOR:

ARCHITECT:

This agreement ("Subcontract") is made and entered into effective this \_\_\_ day of \_\_\_, \_\_\_ by and between Humphries Construction Corporation, herein called "General Contractor," and \_\_\_ herein called "Subcontractor."

WITNESSETH:

The parties hereto desire to contract with reference to a part of the Project and for and in consideration of the mutual and reciprocal obligations herewith contained, it is agreed as follows:

1. Scope of the Work: Subcontractor shall furnish and pay for all labor, equipment, services and materials and perform all work necessary, incidentally required and/or reasonably inferable for the completion of that part of the Project covered by the Contract Documents, in strict compliance thereof, as follows:

- (a) All of the \_\_\_ work as required to make the project complete.
(b) Includes, but is not limited to, the Scope of Work as described on the attached Exhibit A.

All of the foregoing shall hereinafter be defined as "Subcontractor's Work."

2. Contract Documents:

- (a) The Contract Documents are:
1. This Subcontract agreement, pages 1 through 7.
2. Agreement between Owner & Contractor, \_\_\_, dated \_\_\_
3. Project Manual dated \_\_\_
4. Drawings per the Schedule of Drawings attached as Exhibit B.
5. Addendum(s) \_\_\_ dated \_\_\_
(b) A complete set of all documents is available for examination by Subcontractor in the General Contractor's offices and such complete set is incorporated into this agreement by reference.
(c) This Subcontract and the materials and workmanship hereunder are subject to the approval of the Architect.

3. Subcontract Amount: In consideration of prompt and faithful performance of every provision of this Subcontract to the sole satisfaction of the General Contractor or the Architect and Owner, the General Contractor will pay to the Subcontractor the sum of: (\$ \_\_\_)

4. Schedule: The Subcontractor shall start work and shall prosecute Subcontractor's Work rapidly, continuously and uninterrupted in accordance with General Contractor's Schedule of Work and shall complete all of Subcontractor's Work so as not to interfere with or delay General Contractor in completing the entire Project no later than \_\_\_.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract effective the date and year first above written, which together with the Contract Documents, as defined herein, represent the entire and integrated agreement between the parties hereto, supersedes all prior negotiations, representations, or agreements, oral or written, and may only be amended or modified as defined in Article 10 or otherwise as required by this Subcontract.

HUMPHRIES CONSTRUCTION CORPORATION

SUBCONTRACTOR

Kenneth M. Humphries, President

Signature

Witness

Printed Name & Title

Date

Witness & Date

## **5. Prosecution of Subcontractor's Work:**

**(a)** Promptly after execution hereof, Subcontractor shall submit for Architect's approval the specified shop drawings and samples, data, and specification of materials to be used in connection with Subcontractor's Work. No material is to be fabricated or installed without Architect's prior approval. Subcontractor shall furnish sufficient copies of approved drawings for use on the job. Subcontractor shall commence Subcontractor's Work when and where directed by General Contractor, shall prosecute and complete Subcontractor's Work and all changes therein as directed by General Contractor in accordance with General Contractor's Schedule of Work, of which Subcontractor waives written notice and agrees to keep informed, so that Subcontractor shall have all required workmen available and all needed materials fabricated, delivered and ready for installation as early as the progress of the Project will permit. When requested, Subcontractor shall furnish proof satisfactory to General Contractor that all material orders and preliminary arrangements have been made to assure compliance herewith. Subcontractor shall initiate a program for early procurement of materials specifically for this Project.

**(b)** Within fifteen (15) days after the effective date of the Subcontract, Subcontractor shall provide General Contractor scheduling information, including, without limitation, durations, planned crew sizes, planned procurement dates, planned submission dates of required shop drawings and other required submittal data (including that of its subcontractors, vendors, and suppliers). General Contractor shall then prepare the Schedule of the Work, which Schedule shall include Subcontractor's Work and incorporate the reasonable scheduling parameters Subcontractor has provided.

**(c)** The Subcontractor, in agreeing to complete Subcontractor's Work within the time scheduled, acknowledges that time is of the essence and that the General Contractor may make reasonable revisions to the schedule and has taken into consideration and made allowance for the ordinary delays and hindrances incidental to such Subcontractor's Work, whether growing out of delays of common carriers, delays in securing materials or workmen, changes, omissions, alterations, or otherwise, and is cognizant of the fact that General Contractor, in its contract with the Owner, is required to furnish the entire Work within a certain time, and failure on its part to do so may render it liable in damages. If the General Contractor suffers damages or becomes liable for penalties or damages, the Subcontractor shall pay to the General Contractor that portion of such penalties or damages for which Subcontractor is responsible. General Contractor is not to be held responsible for any loss or damage incurred by the Subcontractor in the event the Subcontractor is unable to start or complete Subcontractor's Work as herein contemplated, and the Subcontractor's sole remedy shall be an extension of time in which to perform Subcontractor's Work.

**(d)** Subcontractor shall prosecute Subcontractor's Work in a prompt and diligent manner in accordance with the Schedule of Work without hindering the Work of General Contractor or any other subcontractor. If work or property of others is hindered, delayed, or damaged by Subcontractor, Subcontractor shall pay for all costs and damages incurred by such other party (including General Contractor) and will cause all such damage to be corrected to the satisfaction of and without cost to General Contractor or Owner. Should any subcontractor sustain any loss through (i) any wrongful or negligent act or omission of any other subcontractor, or (ii) failure of any subcontractor to perform its contractual undertakings, the subcontractor so affected shall have no claim or cause of action against General Contractor, the Owner, or the Property, and the subcontractor's sole recourse shall be against the responsible subcontractor to recover any and all loss sustained. However, General Contractor shall use its best efforts to amicably resolve any such dispute between subcontractors. The phrase "act or omission" as used herein shall be defined to include, but shall not be limited to, any unreasonable interruption or delay caused by any such subcontractor.

**(e)** Subcontractor acknowledges that Owner may employ other contractors to work upon the Project site or adjacent sites and that Subcontractor will have the duty to coordinate Subcontractor's Work with that of such other contractors, their suppliers and subcontractors (hereafter collectively "Other Contractors"). Should Other Contractors delay, damage, or disrupt Subcontractor's Work, Subcontractor specifically waives any claim against General Contractor, its surety, or Owner, for any resulting damages, other than time extensions, and will look exclusively to Other Contractors who have caused the damage for the satisfaction of its claim for any and all damages. However, General Contractor shall use its best efforts to amicably resolve any such dispute between subcontractors. Should Subcontractor delay the work or damage the work or equipment of other subcontractors or suppliers of General Contractor, or that of Other Contractors or Owner, in addition to and without waiving any other indemnity contained in this Subcontract, Subcontractor and its surety will indemnify and hold General Contractor and its surety harmless from any claims by any of said parties, including costs, expenses, and attorneys' fees incurred by General Contractor.

**(f)** If the execution and completion of Subcontractor's Work depends upon, or is sequential to Work of General Contractor, its subcontractors and suppliers, or Other Contractors, Subcontractor shall inspect and measure such other Work as soon as the progress thereof will permit and promptly report to General Contractor, in writing, any discrepancies or deficiencies therein which render same unsuitable for the reception of Subcontractor's Work. Failure to so inspect or report shall constitute Subcontractor's acceptance of such other work as fit and proper for the reception of Subcontractor's Work, except as to latent defects in such other work, and Subcontractor shall be liable for all damages incurred as a result of any such failure to so inspect and report.

**(g)** Subcontractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Subcontractor's Work. The superintendent shall be approved by General Contractor and shall not be changed except with the consent of General Contractor, unless the superintendent provided proves to be unsatisfactory to Subcontractor or General Contractor or ceases to be in Subcontractor's employ. The superintendent shall represent Subcontractor and all communications given to the superintendent shall be binding as if given to Subcontractor. The superintendent shall attend all coordination, scheduling, and safety meetings where Subcontractor's Work is involved and as required by General Contractor.

**(h)** Subcontractor shall pay promptly when due for all labor, materials and other expenses incurred hereunder and protect Owner, General Contractor and the property comprising the Project from all claims, liens, judgments, court costs, attorneys' fees and expenses resulting from Subcontractor's failure so to pay or otherwise comply with this Subcontract. If anyone asserts any claim or lien for materials, labor, services or other items furnished or fabricated hereunder which if established could create a liability on the part of the General Contractor and/or Owner or a lien on the property comprising the Project, in addition to any other remedy contained in this Subcontract, General Contractor may retain any payment otherwise due Subcontractor sufficient to protect and indemnify General Contractor, Owner and such property from such claim or lien, including attorneys' fees, court costs, and any other expense incurred by General Contractor related thereto. Subcontractor shall promptly satisfy, discharge or otherwise remove such claim or lien by executing a bond therefore; and if Subcontractor has been paid in full, Subcontractor and/or its Surety shall promptly pay General Contractor all costs and expenses, including attorneys' fees and court costs, incurred by General Contractor in discharging such lien or claim.

**(i)** Bonds for the maintenance and guarantee of workmanship and material shall be furnished as required by the Contract Documents or the General Contractor, with surety or sureties acceptable to the General Contractor.

**(j)** Bonds to insure prompt and faithful performance of the obligations of this Subcontract, and bonds to insure payment of all sums due and owing by Subcontractor for labor and material shall be furnished in the full amount of this Subcontract as required by the Contract Documents or the General Contractor, to General Contractor with surety or sureties acceptable to the General Contractor.

(k) Subcontractor's Work shall be performed by skilled and reputable mechanics and laborers, and shall be in full and strict compliance with the plans, drawings and specifications in the Contract Documents, subject to the approval and acceptance of the General Contractor, Architect and/or Owner.

(l) Subcontractor shall comply with all federal, state and municipal laws, codes, regulations and ordinances effective where Subcontractor's Work is to be performed, and shall promptly pay all fees, licenses, taxes, including sales and use taxes, and expenses required by any law for any employment insurance, pensions, old age retirement funds, or similar purposes, as respects Subcontractor's employees employed in the performance of Subcontractor's Work. Further, General Contractor may require proof of payment of such obligations from Subcontractor.

(m) Subcontractor accepts exclusive liability for all taxes and contributions required of the General Contractor or Subcontractor by the Federal Social Security Act and the unemployment compensation law or any similar law of any state, as respects Subcontractor's employees employed in the performance of Subcontractor's Work, and agrees to furnish General Contractor with suitable written evidence that Subcontractor has been authorized to accept such liability. If Subcontractor fails to furnish such evidence prior to beginning Subcontractor's Work, General Contractor may at its option, pay or reserve for payment said taxes and contributions and deduct the amount so paid or reserved from payments due or to become due to Subcontractor. In addition to and without waiving any other indemnity contained in this Subcontract, Subcontractor agrees to protect and hold harmless General Contractor, Architect, Owner, and the Property, against all liability with respect to said employees under any of said laws.

(n) Subcontractor shall secure and pay for any and all permits and licenses required for the prosecution of Subcontractor's Work.

(o) All equipment and materials are to be installed as per manufacturer's recommendations. Notify General Contractor immediately if those recommendations are in conflict with contract documents. If Subcontractor fails to notify General Contractor of such a conflict in a timely manner, the Subcontractor shall be responsible for all costs related to resolving the conflict to the General Contractor's satisfaction. This provision shall also apply to any alternate systems proposed by subcontractor.

(p) The Subcontractor shall clean up on a daily basis and regularly haul rubbish and surplus material from its operations to a dumpster or trash bin provided by the General Contractor, or the General Contractor may remove the rubbish and surplus material at the Subcontractor's expense.

(q) All of Subcontractor's workmen shall assist in maintaining a clean job site by disposing of miscellaneous trash (lunch, etc.) in designated receptacles. Clean-up by the General Contractor will be charged to the Subcontractor.

(r) Standard working hours at the Project are between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday. Subcontractor shall not enter the job site or perform any of Subcontractor's Work outside of standard hours unless prior arrangements are made with General Contractor's job superintendent. If Subcontractor fails to adequately man the job during standard hours and then requires job access during non-standard hours in order to meet job schedules, Subcontractor agrees to pay for any and all costs (plus overhead and 15% profit) associated with the General Contractor's supervision during such non-standard hours.

## **6. Safety:**

(a) Notwithstanding any other provisions of this Subcontract, Subcontractor hereby agrees that it will comply with all Federal and State laws, rules and regulations regarding the safety and health of its employees and those of its subcontractors and suppliers as well, including, without limitation, complying with any and all Environmental Laws; further that, in addition to and without waiving any other indemnity contained in this Subcontract, Subcontractor agrees to indemnify and hold harmless General Contractor, Architect, Owner, and the Property from all liability, cost and expense arising out of the failure to comply with said laws, rules and regulations caused or occasioned by, directly or indirectly, the nonfeasance, misfeasance or malfeasance of Subcontractor, its agents, employees or subcontractors.

(b) All subcontractors shall assist in providing the safest job site possible by complying with any and all applicable Federal, State and local safety regulations. Subcontractor and its workmen shall abide by a Safety Program established by the Subcontractor having at least the same requirements as the General Contractor's Safety Program, a copy of which is available at the job site. All workmen shall be required to wear hard sole shoes, long pants, shirts and hard hats. Anyone violating any of the above provisions may be removed from the job site immediately.

(c) Subcontractor shall have its own Hazard Communication Program and shall furnish to General Contractor, prior to beginning work, copies of the Material Safety Data Sheets (MSDS) for all substances, which Subcontractor intends to bring onto the job site. This requirement shall not relieve the Subcontractor of the requirement of maintaining its own complete MSDS file at the job site.

## **7. Subcontract Amount and Payments:**

(a) General Contractor will pay Subcontractor at Houston, Harris County, Texas \_\_\_\_\_ monthly, within ten (10) business days after General Contractor has received payment from Owner, for that portion of Subcontractor's Work properly performed by Subcontractor during the previous month, an amount equal to 90 % of the value of Subcontractor's Work completed by the Subcontractor during such previous period. Upon completion of Subcontractor's Work to be performed hereunder, and acceptance thereof by the General Contractor, Architect and/or Owner, the final balance will be paid in full when the Subcontractor has furnished the General Contractor with proof, if requested, satisfactory to the General Contractor that all claims for labor and materials have been satisfied and paid and that there are no unsatisfied claims for injuries to persons or property, and, provided further, that Subcontractor has, in the sole judgment of the General Contractor, complied with all the provisions of this Subcontract. No such partial payment made under this Subcontract shall be conclusive evidence of the performance, either wholly or in part of the Subcontract or Subcontractor's Work, and final payment shall not be construed to mean an acceptance of defective or non-conforming portions of Subcontractor's Work.

(b) Subcontractors shall, before the first invoice, submit to the General Contractor a Schedule of Values of the various parts of Subcontractor's Work made out in such detail as directed by the General Contractor or as required by the Owner. Such Schedule shall be the basis for all invoices.

(c) Subcontractor shall submit monthly invoices in the format as shown on the attached Exhibit C. A signed and notarized "Conditional Waiver and Release on Progress Payment" for each pay period must be received at General Contractor's office before any checks will be released. After the initial payment on the subcontract, an "Unconditional Waiver and Release on Progress Payment" and an "Affidavit of Bills Paid" for the prior pay period will be required before subsequent payments will be made. Copies of the waivers and the affidavit are attached as Exhibits D1 through D3.

(d) All invoices must be submitted to the General Contractor by the 25th of each month to be included in the draw for that month. Invoices received after the 25th will be included with the following month's draw.

(e) Payments made on account of materials not incorporated in the work, but delivered and suitably stored at the site, or at some other location agreed upon in writing, shall be in accordance with the terms and conditions of the Contract Documents. All invoices for such materials shall be for no more than their actual direct cost less retainage and must be accompanied by invoices from the original supplier. Payment on account of stored materials shall constitute transfer of ownership, but shall not in any way relieve the Subcontractor of its responsibility or liability for security, protection against damage, conformance with specifications or defects.

(f) Notwithstanding anything contained in this Subcontract to the contrary, all progress payments and final payment required by the Subcontract are contingent and subject to Owner's acceptance of all of Subcontractor's Work and General Contractor's receipt of payment from Owner for Subcontractor's Work and General Contractor's work. Subcontractor acknowledges that it is sharing, to the extent of any payments due Subcontractor, in the risk that the Owner may fail to make one or more payments to General Contractor for all or a portion of Subcontractor's Work. Subcontractor further agrees that Owner's payment to General Contractor of all progress payments and final payment for Subcontractor's Work shall be an express CONDITION PRECEDENT to any obligation of General Contractor to make any payments to Subcontractor, including, without limitation, progress payments, retainage, or final payment. If the Owner has not paid General Contractor for any reason whatsoever, including, without limitation, the Owner's financial inability to pay or some other reason not related to Subcontractor, Subcontractor agrees that General Contractor shall not be liable for payment, nor be indebted, to Subcontractor. Subcontractor assumes the credit risk of dealing with Owner and agrees that it has relied solely on Owner's credit and not that of General Contractor. Any surety of General Contractor shall be entitled to the same defenses of non-payment by Owner against Subcontractor.

(g) In the event it appears to General Contractor that the labor, material, and other bills incurred in the performance of Subcontractor's Work are not being currently paid, General Contractor may take such steps as General Contractor deems necessary to ensure that the money paid with any progress payment will be utilized to pay such bills. Failure to timely pay such expenses shall constitute an event of default with the remedies provided in Article 8 below.

(h) General Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor, whether pursuant to this Subcontract or any other agreement or relationship between General Contractor and Subcontractor; and in the event of any breach by Subcontractor of any provision or obligation of this Subcontract or any other agreement, or in the event of the assertion by other parties of any claim or lien against Owner, General Contractor, General Contractor's surety, or the premises upon which Subcontractor's Work was performed, which claim or lien arises out of Subcontractor's performance of this Subcontract, General Contractor shall have the right, but is not required, to retain out of any payments due or to become due to Subcontractor, an amount sufficient to completely protect General Contractor and Owner from any and all loss, damage, or expense, including legal fees and legal expenses therefrom, until the claim or lien has been adjusted by Subcontractor to the satisfaction of General Contractor. This paragraph shall be applicable even though Subcontractor has posted a full payment and performance bond.

(i) General Contractor may withhold payments for the unpaid balance of the Subcontract sum if there is reasonable doubt that the Subcontractor's Work will be completed on schedule and in accordance with the Contract Documents. General Contractor agrees to convey such concerns, in writing, to Subcontractor prior to withholding any funds.

(j) All sums tentatively earned by Subcontractor by the partial or complete performance of Subcontractor's Work and any balance of unearned Subcontract funds shall constitute a fund for the purpose of:

- (1) first, full completion of the Subcontractor's Work in accordance with the Contract Documents;
- (2) second, payment of any backcharges or claims due General Contractor from Subcontractor, for any project; and
- (3) third, payment to the sub-subcontractors, laborers, material and service suppliers of Subcontractor who have valid and enforceable mechanic's lien claims, or, if the Project is bonded, valid and enforceable claims against the General Contractor's bond.

Such tentative earnings shall not be due or payable to Subcontractor or anyone else claiming in Subcontractor's place and stead, including, but not limited to, a trustee in bankruptcy, receiver, or assignee of Subcontractor, until and unless such Subcontractor's Work is fully and satisfactorily completed and such persons are fully paid and satisfied. General Contractor may demand written evidence of Subcontractor's capability to perform and of such payments to such persons by Subcontractor at any time.

## **8. Indemnity:**

**(a) TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND EXCEPT AS SET OUT IN SUBPARAGRAPH (b) BELOW, SUBCONTRACTOR AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND (WITH COUNSEL ACCEPTABLE TO GENERAL CONTRACTOR) GENERAL CONTRACTOR, OWNER AND ARCHITECT, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (COLLECTIVELY THE INDEMNITEES), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING WITHOUT LIMITATION ATTORNEYS FEES, COURT COSTS, EXPERT FEES AND ALL OTHER REASONABLE LITIGATION AND ARBITRATION COSTS, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS SUBCONTRACT OR SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS SUBCONTRACTOR MAY BE LIABLE.**

**(b) NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION CHAPTER 151 OF THE TEXAS INSURANCE CODE, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND (WITH COUNSEL ACCEPTABLE TO GENERAL CONTRACTOR) THE INDEMNITEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING WITHOUT LIMITATION ATTORNEYS FEES, COURT COSTS, EXPERT FEES AND ALL OTHER REASONABLE LITIGATION AND ARBITRATION COSTS, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF SUBCONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF THE PARTIES THAT IN SUCH EVENT THE SUBCONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF SUBCONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**(c) THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INTENDED TO AND SHALL NOT REQUIRE THE SUBCONTRACTOR OR OTHERS TO INDEMNIFY OR HOLD HARMLESS A REGISTERED ARCHITECT, LICENSED ENGINEER OR AGENT, SERVANT OR EMPLOYEE OF A REGISTERED ARCHITECT OR LICENSED ENGINEER FROM LIABILITY FOR DAMAGE THAT IS (1) CAUSED BY OR RESULTS FROM: (A) DEFECTS IN PLANS, DESIGNS OR SPECIFICATIONS PREPARED, APPROVED OR USED BY THE ARCHITECT OR ENGINEER; OR (B) THE NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND PLANS, DESIGNS OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (2) ARISES FROM PERSONAL INJURY OR DEATH, PROPERTY INJURY, OR ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH OR PROPERTY INJURY.**

**(d)** During the full term of Subcontractor's Work and of this Agreement and prior to starting work, Subcontractor shall at all times carry insurance required by the law of the place where Subcontractor's Work is to be performed and shall maintain the following insurance coverage in primary and/or excess form, with limits not less than those described below, with insurers licensed to do business in the State of Texas and in forms or policies acceptable to Owner and Contractor:

GENERAL LIABILITY	BI & PD COMBINED OCC	\$1,000,000
	BI & PD COMBINED AGG	\$2,000,000
AUTOMOBILE LIABILITY	BI & PD COMBINED	\$1,000,000
EXCESS LIABILITY	UMBRELLA	\$2,000,000
WORKERS' COMPENSATION		STATUTORY LIMITS
EMPLOYER'S LIABILITY		\$ 1,000,000

**1. Waiver of Subrogation:** All insurance policies shall include a waiver of subrogation in favor of the General Contractor, Owner and Architect.

**2. Additional Insured:**

i) General Contractor, Owner and Architect shall be included as additional insureds under all policies, except for Workers' Compensation, for liability arising out of Subcontractor's Work, including products and completed operations coverage for a period of ten years following Substantial Completion, except to the extent of liability attributable to the negligence or fault of the General Contractor, Owner Architect.

ii) **NOTWITHSTANDING THE FOREGOING, AS TO LIABILITY OF GENERAL CONTRACTOR, OWNER OR ARCHITECT FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OR AGENT OF SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTOR, THE ADDITIONAL INSURANCE PROVIDED BY SUBCONTRACTOR SHALL PROVIDE COVERAGE FOR THE NEGLIGENCE OR FAULT OF THE GENERAL CONTRACTOR, OWNER OR ARCHITECT, INCLUDING THE SOLE NEGLIGENCE OF THE GENERAL CONTRACTOR, OWNER OR ARCHITECT.**

The insurance provided by the Subcontractor to General Contractor, Owner and Architect shall be primary and noncontributory to other insurance available to General Contractor, Owner and Architect. Equivalent additional insured coverage shall also be provided by the Subcontractor to General Contractor, Owner and Architect on Subcontractor's umbrella liability policy on a "follow form" basis and that additional insured coverage on the umbrella policy shall be primary to any other coverage available to the General Contractor, Owner and Architect.

**(e)** Subcontractor shall carry its own Builder's Risk Insurance in and about the building site, including all temporary material and structures used by it, unless same is carried and paid for by the Owner or General Contractor. In either case, the Subcontractor shall be solely responsible for any deductible feature of the Builder's Risk Insurance as shall be applicable to its share of the covered loss.

**(f)** Subcontractor shall furnish General Contractor with Certificates of Insurance, as satisfactory evidence, not later than ten (10) days after acceptance of the Subcontract by the General Contractor and before Subcontractor's Work has commenced indicating that all said insurance has been obtained and paid for and will continue in force until the completion of said work, and if Subcontractor should sublet any of Subcontractor's Work to a third party, Subcontractor shall see to it that such third party shall carry such insurance and furnish said evidence thereof. Subcontractor's obtaining of the insurance required by this subparagraph (c) shall in no manner lessen or affect Subcontractor's obligations as set forth in subparagraph (a) of this article, or in any other provision of this Subcontract. In addition, such policies of insurance shall cover and include all contractually assumed liability of Subcontractor hereunder and shall provide for receipt by General Contractor of thirty (30) days prior written notice of any intended cancellation, change in the provisions thereof, or failure to renew.

**(g)** Subcontractor shall provide an original Certificate of Insurance which provides for at least the minimum limits of coverage, the specific endorsement language and endorsements as listed below and the project designation as required by the subcontract and as shown on the sample certificate attached as Exhibit E.

1. CGL: Additional Insureds: CG 20 10 11 85 **OR** CG 20 10 07 04 **AND** CG 20 37 07 04.
2. CGL: Waiver of Subrogation: CG 24 04 05 09 or Carrier's Equivalent Form
3. CGL: Primary & Non-contributory: CG 20 01 04 13 or Carrier's Equivalent Form
4. WC: Waiver of Subrogation: WC 42 03 04 A or Carrier's Equivalent Form
5. Auto: Additional Insureds: CA 20 48 02 99 or Carrier's Equivalent Form
6. Auto: Waiver of Subrogation: CA 04 44 03 10 or Carrier's Equivalent Form
7. 30 Day Notice of Cancellation

**9. General Contractor's Obligations:**

**(a)** General Contractor shall not be responsible for any damage done to Subcontractor's Work or property of the Subcontractor, unless such damage shall be caused by the direct and sole negligence of General Contractor. The Subcontractor shall effectively secure and protect Subcontractor's Work until the same is accepted in writing by the Owner. In addition to and without waiving any other indemnity contained in the Subcontract, should another trade entity allege damage or a claim against the General Contractor as a result of Subcontractor's actions or omissions, Subcontractor agrees to indemnify and hold harmless General Contractor from such a claim.

**(b)** Subcontractor will pay \$ NA per hour (normal working time) for the use of hoisting equipment and operator of the General Contractor on the job. Subcontractor will furnish all other equipment including scaffolding, tools and special equipment as well as to perform its own engineering layout necessary to perform this Subcontract, unless otherwise specified herein.

## **10. Changes in Subcontractor's Work:**

(a) No extra work or changes under this Subcontract will be recognized or paid for, unless agreed to and authorized in writing before the work is done or changes are effected.

(b) Changes, deletions and additions in or to Subcontractor's Work may be made by General Contractor in accordance with the provisions of the Contract Documents without notice to the surety and Subcontractor shall comply therewith. General Contractor, at any time before the completion of Subcontractor's Work, may order additions, omissions or alterations to said work, or may approve such additions, omissions or alterations upon written request of Subcontractor, but no such additions, omissions or alterations shall be made and finalized, except by written Change Order signed by the project manager of the General Contractor, setting forth the items, prices and details concerning extra work or omissions, as mutually agreed upon. An invoice for labor and/or materials submitted to the General Contractor shall not constitute a "written request of the Subcontractor." General Contractor shall not be liable to Subcontractor for any extra work and/or materials without such written Change Order. The price for additional work or deleted work shall be at a rate similar to the rate for similar items of work under this Subcontract, with adjustments relating to physical access and the timing of the change. The aggregate mark-up for overhead and profit shall be the lesser of twenty-five percent (25%) of the direct cost of Subcontractor's Work or that percentage specified by the Contract Documents. Subcontractor shall submit detailed backup support for the price quoted. At its sole discretion, the General Contractor shall not be required to use Subcontractor for additional or changed work.

(c) Notwithstanding any provision contained in the Subcontract to the contrary, General Contractor shall not be liable to Subcontractor for delay to Subcontractor's Work by the act, neglect, or default of the Owner, Architect, General Contractor, action of workmen or others, or any cause beyond General Contractor's control. In such event, Subcontractor agrees that time extensions shall be its sole remedy for any such delays and Subcontractor expressly waives all monetary claims for delay damages. However, notwithstanding the foregoing, should the Owner compensate General Contractor for any delay damages which are otherwise precluded by the foregoing, Subcontractor shall be entitled to its pro rata portion thereof. Actual receipt by General Contractor of such delay damages is a CONDITION PRECEDENT to General Contractor's obligation to pay Subcontractor.

## **11. Warranty.**

(a) Subcontractor agrees to guarantee Subcontractor's Work against all defects of materials or workmanship, as called for in the Contract Documents, or if no guarantee is called for by the Contract Documents, then for a period of one (1) year from the date of final acceptance of Subcontractor's Work by the Architect or as specified in the Contract Documents. Receipt by General Contractor of all guarantees or warranties stipulated by the Contract Documents are required prior to processing Subcontractor's final payment. Subcontractor shall be liable for any damages to other portions of the Project that are caused by defects in the Subcontractor's Work.

(b) Notwithstanding any other term or provision contained herein to the contrary, and in accordance with TEX. CIV. PRAC. & REM. CODE § 16.009(e)(1), Subcontractor and General Contractor expressly understand, agree, and accept that for the purpose of calculating the ten (10) year period in § 16.009, the Date of Substantial Completion of Subcontractor's Work shall be the same date as the Date of Substantial Completion for the Project.

(c) Subcontractor further understands, accepts and agrees that if any person or entity brings suit for damages for any claim arising out of an alleged defective or unsafe condition of the Project, or an alleged deficiency in the construction or repair of the Project, which may be covered by the indemnification agreements specified above, and a court of competent jurisdiction determines that in spite of the parties' agreement in (b) above, the Date of Substantial Completion of Subcontractor's Work is not the same date as the Date of Substantial Completion of the Project, Subcontractor hereby waives and relinquishes any right it may have to assert a defense based upon Subcontractor's Date of Substantial Completion being different than the Date of Substantial Completion for the entire Project.

## **12. Default and Termination:**

(a) At any time, should Subcontractor, in the sole opinion of the General Contractor, refuse or neglect to supply a sufficient number of properly skilled workmen (including without limitation, failure to supply such workmen due to strikes, picketing, slowdowns or any labor dispute) or materials in proper quality or quantity, or fail in any respect to prosecute Subcontractor's Work in strict compliance with the Contract Documents or any separate portion thereof with promptness and diligence, or fail in the performance of any of the agreements on its part contained herein, or become insolvent or any bankruptcy or receivership petition is filed by or against Subcontractor, General Contractor may, after twenty-four (24) hours written notice to Subcontractor of such refusal and neglect, provide any such labor or materials and deduct the cost thereof from any money due or thereafter to become due Subcontractor under this Subcontract; and forty-eight (48) hours after the notice, the General Contractor may also terminate Subcontractor's right to proceed with Subcontractor's Work or such part of Subcontractor's Work as to which such defaults have occurred.

(b) In the event of such termination, General Contractor may enter upon the Subcontractor's premises and, for the purpose of completing Subcontractor's Work, take possession of all materials, equipment, tools and appliances thereon belonging to Subcontractor and may finish Subcontractor's Work by whatever method General Contractor may deem expedient, including, without limitation, the hiring of another subcontractor or subcontractors as General Contractor may deem advisable. In such event, Subcontractor shall not be entitled to receive any further payment until Subcontractor's Work is finished and if the unpaid balance of the amount to be paid under the provisions of this Subcontract shall exceed all costs and expenses incurred by General Contractor of finishing Subcontractor's Work plus such other costs and damages as General Contractor may suffer by reason of such failure on Subcontractor's part, such excess shall be paid to Subcontractor; however, if such expense, costs and damages exceed such unpaid balance, Subcontractor and its sureties, if any, shall be liable for and shall pay General Contractor such difference promptly. Subcontractor acknowledges that it is reasonable for General Contractor to employ a reputable substitute contractor upon a cost-plus or time and material basis to complete Subcontractor's Work that has been partially performed.

(c) In addition to and without waiving any other provision in the Subcontract, General Contractor may, without cause, order the Subcontractor in writing to suspend, delay, interrupt, or terminate Subcontractor's Work in whole or in part for such period of time as General Contractor may determine. In the event General Contractor orders a suspension or termination, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and/or Subcontract Sum.

(d) Solely in the event of (c) above, an equitable adjustment shall be made for changes in the Subcontract Time and Subcontract Sum, including profit based upon any change in the cost of performance, caused by the suspension, delay, interruption, and/or termination of Subcontractor's Work. No adjustment shall be made to the extent:

- (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; and
- (2) that an equitable adjustment is made or denied under another provision of this Subcontract.

### **13. Miscellaneous:**

**(a)** Should General Contractor employ an attorney to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Subcontract, or to collect damages for the breach of this Subcontract, or to prosecute or defend any suit resulting from this Subcontract, or to recover on the surety bond given by Subcontractor under this Subcontract, Subcontractor and its surety, jointly and severally, agree to pay General Contractor all reasonable costs, charges, expenses and attorneys' fees expended or incurred therein.

**(b)** This Subcontract shall conclusively be deemed to have been jointly prepared by all parties hereto, and any uncertainty or ambiguity in it shall not be presumptively interpreted against any of the parties, but according to the application of the rules of interpretation of contracts.

**(c)** Subcontractor waives any and all claims against General Contractor for incidental or consequential damages arising out of or relating to this Subcontract, including, without limitation, any consequential damages due to General Contractor's termination, suspension, interruption, or delay in accordance with Article 12.

**(d)** Neither party shall be deemed to have waived its right to enforce any provision of this Subcontract no matter how many times a party may have failed or delayed in enforcing any provision hereof although entitled to do so.

**(e)** This Subcontract shall not be assigned, nor the whole nor any part thereof sublet or transferred by the Subcontractor without the prior written consent of the General Contractor. Any such purported assignment shall be null and void, and of no force or effect.

**(f)** This Subcontract shall be governed by and construed in accordance with the substantive laws of the State of Texas. Venue for any action relating to this Subcontract shall be in Harris County, Texas.

**(g)** Any notice, request, or communication under this Subcontract shall be in writing and shall be delivered in person or sent by certified mail, return receipt requested, addressed to the applicable party at such address as set out above such party's signature hereto. All such notices, requests, or other communications, if made by General Contractor to Subcontractor, shall be deemed to have been sufficiently given for all purposes herein, on the earlier of the day it is received, or on the date of mailing, or transmitted by telecopier or email thereof. If such notice, request, or communication is made by Subcontractor, such notice shall be effective only when actually received by General Contractor.

**(h)** Subject to other provisions hereof, this Subcontract shall inure to the benefit of the parties hereto and their respective successors and assigns.

**(i)** This Subcontract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior and contemporaneous agreements, understandings, representations, and statements (oral and written) are merged into this Subcontract. No prior written or contemporaneous oral promises or representations, which are not expressly set forth in, this Subcontract shall be binding. Neither this Subcontract nor any provision hereof may be waived, modified, amended, discharged, or terminated except as provided for herein, or by an instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and only to the extent set forth in such instrument. This Subcontract shall not be construed against the drafter hereof, but shall be construed as if all parties drafted same.

**(j)** If any provision of this Subcontract is held to be illegal, invalid, or unenforceable under the present or future laws, (i) such provision shall be fully severable; (ii) this Subcontract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Subcontract; and (iii) the remaining provisions of this Subcontract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Subcontract.

**(k)** Subcontractor's surety shall be responsible for the payment of all costs, losses, or damages incurred by General Contractor as a result of Subcontractor's failure to comply with any provision of this Subcontract as a part of said surety's payment or performance bond undertakings, except for the insurance and indemnification coverages supplied by other insurers under the provisions of Article 4.

**(l)** This Subcontract may be created in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

**(m)** The parties hereto acknowledge that they have the right to consult with legal counsel concerning the contents of this Subcontract and the rights and obligations created thereby. By executing this Subcontract, each party acknowledges that it has consulted with legal counsel of its own choosing to the extent each party deemed advisable.

**(n)** All pronouns herein, whether masculine, neuter, singular, or plural shall be deemed to indicate the appropriate gender and number.

**(o)** This Subcontract must be executed and returned to General Contractor within fifteen (15) days or the General Contractor may, at its sole discretion and by written notice, void and withdraw this Subcontract.

**(p)** General Contractor may elect at its sole discretion to arbitrate any claim, dispute, or other matter arising out of, or relating to this Subcontract. In the event General Contractor elects not to arbitrate, Subcontractor likewise agrees to waive any right it may possess to compel arbitration. In the event General Contractor and Owner or others arbitrate matters relating to this Subcontract, it shall be the responsibility of Subcontractor to prepare and present General Contractor's case, to the extent the proceedings are related to this Subcontract. If any subcontractor is made a party to arbitration with respect to any matter which involves another subcontractor or which might affect the agreement of another subcontractor, such other subcontractor may be made a party to and joined in that arbitration. Additionally, should General Contractor enter into arbitration with Owner or others regarding matters relating to this Subcontract, Subcontractor will agree, if requested by General Contractor, to consolidation of Subcontractor's arbitration with General Contractor's arbitration with the Owner, but, in any event, Subcontractor shall be bound by the result of the arbitration with the Owner to the same degree as General Contractor. In such event, the award rendered by the arbitrators shall be final, and judgment may be entered in accordance with applicable law in any court having jurisdiction thereof and the prevailing party shall recover from the losing party such additional sum as the arbitrators may adjudge reasonable as costs, including attorneys' fees, in connection with the arbitration.